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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/821,766	04/09/2004	Bruce Baker	BBA-10002/29	1449
25006 7590 08/21/2007 GIFFORD, KRASS, SPRINKLE, ANDERSON & CITKOWSKI, P.C PO BOX 7021 TROY, MI 48007-7021			EXAMINER WILLIAMS, MARK A	
			ART UNIT 3676	PAPER NUMBER
			MAIL DATE 08/21/2007	DELIVERY MODE PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.



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**BEFORE THE BOARD OF PATENT APPEALS
AND INTERFERENCES**

Application Number: 10/821,766
Filing Date: 4/9/2004
Appellant(s): BAKER

MAILED

AUG 21 2007

GROUP 3600

John G. Posa
For Appellant

EXAMINER'S ANSWER

This is in response to the appeal brief filed 5/9/06 appealing from the Office action mailed 3/23/06.

(1) Real Party in Interest

A statement identifying by name the real party in interest is contained in the brief.

(2) Related Appeals and Interferences

The examiner is not aware of any related appeals, interferences, or judicial proceedings which will directly affect or be directly affected by or have a bearing on the Board's decision in the pending appeal.

(3) Status of Claims

The statement of the status of claims contained in the brief is correct.

(4) Status of Amendments After Final

The appellant's statement of the status of amendments after final rejection contained in the brief is correct.

(5) Summary of Claimed Subject Matter

The summary of claimed subject matter contained in the brief is correct.

(6) Grounds of Rejection to be Reviewed on Appeal

The appellant's statement of the grounds of rejection to be reviewed on appeal is correct.

(7) Claims Appendix

The copy of the appealed claims contained in the Appendix to the brief is correct.

(8) Evidence Relied Upon

Jasperson, Design Patent Des.305,496

(9) Grounds of Rejection

The following ground(s) of rejection are applicable to the appealed claims:

Claim Rejections - 35 USC § 102

1. The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(b) the invention was patented or described in a printed publication in this or a foreign country or in public use or on sale in this country, more than one year prior to the date of application for patent in the United States.

2. Claims 20, 21, and 31 are rejected under 35 U.S.C. 102(b) as being anticipated by Jasperson, Design Patent Des.305,496. See below figure. A hand tool, comprising a curved trowel blade having a lower surface tangent to a plane; a handle attached to the blade, the handle being curved in a plane perpendicular to

the plane tangent to the blade; the handle including an outer surface defining a portion of a circular arc; and wherein the handle terminates in a gripping section that intersects and extends beyond the plane tangent to the blade. The circular arc has a center below the plane tangent to the blade. Regarding claim 31, the device is capable of performing as claimed.

Claim Rejections - 35 USC § 103

3. The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

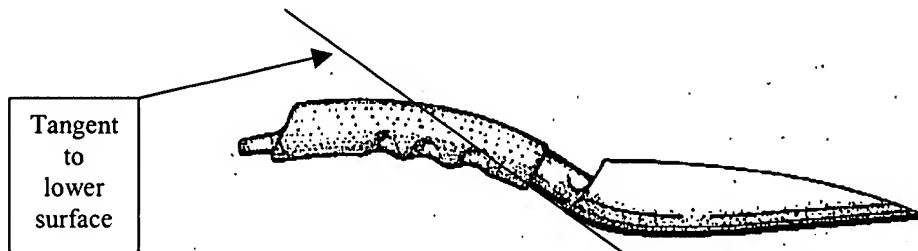
4. Claims 22 and 23 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jasperson. It would have been obvious to one having ordinary skill in the art at the time the invention was made to have modified the device in the claimed manner since it has been held that where the general conditions of a claim are disclosed in the prior art, discovering the optimum or workable ranges involves only routine skill in the art. *In re Aller*, 105 USPQ 233. Such modifications are not critical to the design and would have produced no unexpected results. One reason

for making such modification may be for optimizing comfort of the gripping surface for the average user.

5. Claims 24 and 25 are rejected under 35 U.S.C. 103(a) as being unpatentable over Jasperson. It would have been an obvious matter of design choice to make the different portions of the device of whatever form or shape was desired or expedient. A change in form or shape is generally recognized as being within the level of ordinary skill in the art, absent any showing of unexpected results. *In re Dailey et al.*, 149 USPQ 47. Such modifications are not critical to the design and would have produced no unexpected results. One reason for making such modification may be for optimizing comfort of the gripping surface for the average user.

6. Claim 30 is rejected under 35 U.S.C. 103(a) as being unpatentable over Jasperson. Jasperson shows what appears to be a polymeric covering, but it is not explicitly described. The examiner serves Official Notice that it is old and well known in the art of handles to use such covers for the purpose of improved gripping and comfort. It would have been obvious at the time the invention was

made to modify the devices in this way, for the purpose of providing improved gripping and comfort.

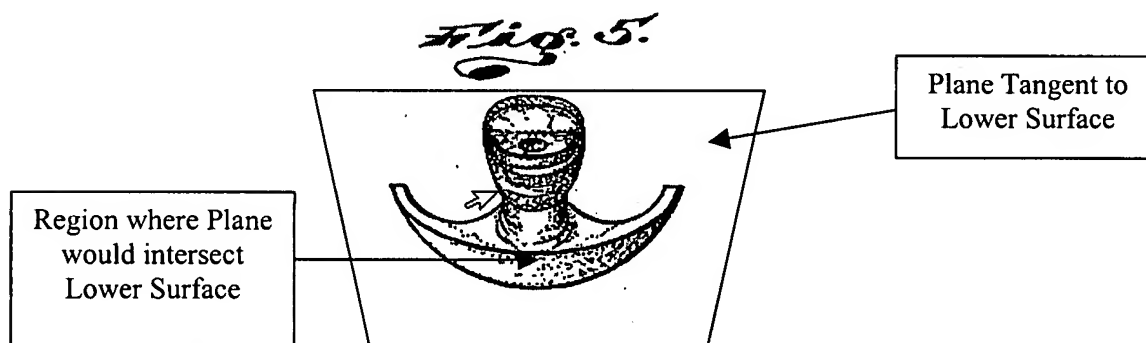


(10) Response to Argument

Applicant argues that the examiner's interpretation of a plane tangent to a lower surface, as shown in the attached figure, is unreasonable and contrary to common sense, and that the only reasonable interpretation is that argued by applicant. However, the examiner disagrees. Applicant's claim language is to such a broad extent that the applied art could clearly meet such limitations since no limiting language has been claimed to prevent such an interpretation. The line shown in the examiner's attached figure intersects a plane that would extend normal to the plane of the page, and would be tangent to at least part of the lower surface of the blade; thus meeting the claim language. It is the position of the examiner that the applicant is being unreasonable in suggesting that one skilled in

the art would limit their interpretation of the device to only that interpretation provided by applicant.

Applicant assert that in order for the examiner to be consistent, the examiner must be able to draw the tangent plane in every view of the figure disclosed by the applied art (namely figure 5). However, the examiner disagrees. It is not a requirement for a claim to be anticipated by prior art for such a condition to exist. None the less, such an angled plane could be drawn as in the below attached figure.



Applicant argues that although the prior art may be capable of performing as claimed, there must be some suggestion or motivation in the reference to do so. However, the examiner disagrees. Intended used is not patentable subject matter, and as long as the device of the prior art can be used in the manner claimed, whether it is intended to be used in that manner or not, the prior art satisfies the

structural limitations of the claims. With respect to the applied art, clearly one is capable of holding the handle in the manner claimed. Although the claimed manner of holding the handle of the applied art may not be the intended manner of holding the handle, the structural limitations of the claims language are broadly met.

Applicant argues that there is no teaching or suggestion in the applied art for the optimization of the dimensions for the purpose of comfort in gripping. Although it is true that the applied art provides no disclosure addressing such limitations, it is the position of the examiner that such claimed subject matter is highly obvious, not critical to the design, and one skilled in the art would know that such a range of dimensions could be obviously chosen. In addition to comfort, one skilled in the art would also know that such dimensions could be selected for visual appeal.

Applicant argues that an unexpected result was achieved by the discovery of the ability to use the tool in a wrist-neutral position. Although this may or may not be true, the claims do not overcome the applied art of record as outlined in the above rejection.

Applicant has not argued examiner's indication of Official Notice in prior Office actions. Thus, it is the position of the Office that applicant concedes the examiner's indication of Official Notice as being proper.

(11) Related Proceeding(s) Appendix

No decision rendered by a court or the Board is identified by the examiner in the Related Appeals and Interferences section of this examiner's answer.

For the above reasons, it is believed that the rejections should be sustained.

Respectfully submitted,

Mark Williams



Conferees:

Jennifer Gay



Meredith Petravick



JENNIFER H. GAY
SUPERVISORY PATENT EXAMINER